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## **Equalities, Human Rights and Civil Justice Committee**

# **Report on the Equalities, Human Rights and Civil Justice Committee inquiry into Civil Legal Assistance in Scotland**



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# Equalities, Human Rights and Civil Justice Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- a. matters relating to equal opportunities, and upon the observance of equal opportunities within the Parliament; and
- b. matters relating to human rights.
- c. matters relating to civil justice within the responsibility of the Cabinet Secretary for Justice and Home Affairs.

## 2. In these Rules

(a) “equal opportunities” includes the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds or on grounds of disability, age, sexual orientation, language or social origin or of other personal attributes, including beliefs or opinions such as religious beliefs or political opinions; and

(b) “human rights” includes Convention rights (within the meaning of section 1 of the Human Rights Act 1998) and other human rights as for example contained in any international convention, treaty or other international instrument ratified by the United Kingdom.

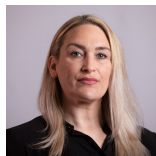


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# Introduction

1. Access to justice has been a key theme of the Committee's work over the course of this session. In particular, the Committee has been concerned about the provision of civil legal assistance and the increasing challenges faced by some in finding a lawyer to take on a case.
2. In the context of recent increasing concern about the ever declining number of solicitors in Scotland offering to undertake legal aid work and the impact of that on access to justice, the Committee agreed at its meeting on 4 February 2025 to undertake an inquiry into civil legal assistance in Scotland.
3. The Committee agreed to focus on:
  - what is working and not working within the current civil legal aid system; and
  - what changes could be made in the short and longer term to address access issues.
4. To inform the inquiry the Committee launched a [call for views](#), which closed on 17 April 2025. The Committee received [38 responses](#).
5. The Committee also held three evidence sessions. At its meeting on [13 May](#) the Committee heard from professional bodies and bodies receiving grant funding from. On [20 May](#) the Committee heard from bodies representing client groups and academics and bodies speaking to human rights and environmental issues in relation to legal aid. Finally, on [27 May](#) the Committee took evidence from the SLAB and the Minister for Victims and Community Safety.
6. The Committee is very grateful to all those who provided the Committee with written and oral evidence.
7. In this report, drawing on the evidence it received, the Committee reflects on the key themes it set out at the outset of this inquiry and makes recommendations for how it considers civil legal assistance could be delivered more effectively in Scotland, ensuring that there is better access to justice for all.
8. The Committee had intended to publish its report prior to summer recess, however, shortly before the Committee was due to consider a first draft the Committee received correspondence from SLAB <sup>1</sup> suggesting that some of the evidence provided to the Committee was based on "demonstrable misunderstandings". This report reflects on this additional evidence by SLAB as well as on further evidence received prompted by SLAB's evidence.
9. While the Committee has reflected on SLAB's letter in this report, it is disappointing that this evidence was provided at such a late juncture, delaying the publication of this report. SLAB was given an opportunity to fully respond to the evidence the Committee received in oral evidence and it would have been far preferable if it had availed itself of that opportunity or submitted follow-up evidence more promptly rather than submitting its letter at such a late juncture.
10. A number of technical terms are used in this report. To support the understanding of

this report a list of technical terms and their meanings are included at the Annex to this report.

# Background

11. Legal aid policy is set by the Scottish Government, while legal aid applications and payments are administered by SLAB. You must apply for legal aid through a solicitor, so it is not possible to access legal aid-funded advice without access to a solicitor.
12. There are three types of civil legal assistance:
  - Advice and Assistance – covers advice (but not representation in court) from a solicitor on any matter of Scots law
  - Advice by Way of Representation (ABWOR) – an extension of Advice and Assistance which allows representation in certain forums, including some tribunals
  - Civil Legal Aid – covers representation (and related support) from a solicitor in most court processes.
13. Legal aid is subject to financial and other eligibility tests. The financial eligibility test for Advice and Assistance and ABWOR is strict, with the test for Civil Legal Aid being more generous, but complex to administer.
14. Even where someone meets the eligibility criteria for legal aid, they may be required to pay a contribution towards the cost of legal aid-funded legal services. This is calculated in bands as a percentage of their disposable income. The higher the assessed level of disposable income, the higher the contribution.
15. Where someone gains or retains assets (such a house or compensation) as a result of legal proceedings funded by legal aid, SLAB can use the value of the asset to contribute towards the costs of the case. This is known as “clawback”.
16. Civil Legal Aid is available where someone has disposable income (income minus necessary expenditure on things like housing costs, childcare and loans) of up to £26,239, where they also meet requirements in relation to capital (the capital limit is £13,017). People with disposable incomes above £3,521 will have to make a contribution from their own income towards the cost of legal advice.
17. Advice and Assistance is available where someone has weekly disposable income of up to £245, and disposable capital assets of up to £1,716. People with incomes above £105 will have to make a contribution towards the cost of legal advice.
18. The Scottish Government has undertaken significant work in relation to legal aid in recent years. It commissioned [an independent strategic review of legal aid](#), which reported in 2018 (the “Evans Review”). The headline recommendations of this review were:
  - that legal aid should be focussed on the needs of the user/client;
  - it should encompass all advice services (including services like local authority money advice or Citizens Advice Bureaux);
  - legal aid rules should be simplified;

- the system should be more flexible in order to adapt to technological change and different user needs;
  - a body with responsibility for policy should oversee the delivery of legal aid; and
  - there should be an evidence-based system for setting solicitor fees.
19. The Scottish Government has consulted on reform of legal aid in the broad direction of the Evans Review recommendations on several occasions. In the Programme for Government 2021-22, it committed to bringing forward legislation to reform legal aid during this parliamentary session. However, it has since stated that this will no longer happen.
20. The Scottish Government did establish several groups to take forward the Evans Review recommendation of an evidence-based process for setting legal aid fees. Key stakeholders, including the Law Society of Scotland, withdrew from the most recent group due to a lack of progress.
21. The Scottish Government published a legal aid discussion paper in March 2025. It proposed a three-stage approach to reform:
- research on and reform of legal aid fees, to be delivered in 2025 – the Law Society and other stakeholders have been invited to work with the Scottish Government on this;
  - changes to regulations to simplify the current system, to be delivered in 2025 to 2026 - for civil legal assistance, proposals include assessing financial eligibility using standardised personal allowances and introducing block fees for adults with incapacity work (such as guardianship orders); and
  - longer-term reform, including testing different funding models and embedding user experience in decision-making, with a view to introducing new legislation in the future.

# Overview

22. In this inquiry a number of significant concerns have been brought to the Committee's attention about the operation of civil legal assistance in Scotland and what this means in terms of access to justice.
23. Fundamentally, however, what has emerged is an urgent need for reform of civil legal assistance.
24. The Committee notes SLAB's suggestion that some of the evidence presented to the Committee was predicated on "demonstrable misunderstandings" of civil legal assistance, which suggest greater barriers to accessing assistance than actually exist.<sup>1</sup>
25. The Committee considers that the level of uncertainty and complexity in the system that might prompt any misunderstanding simply highlights the pressing need for fundamental reform. The Committee is not persuaded that the evidence presented to the Committee will in of itself impose greater barriers in accessing justice.
26. Moreover, it is clear that significant reform is long overdue. Dr Marsha Scott, Chief Executive of Scottish Women's Aid, highlighted in her evidence to the Committee that she was raising issues she'd been highlighting since 2017.
27. While the Scottish Government's launch of a legal aid discussion paper is to be welcomed, it is of considerable disappointment to the Committee that legislation giving effect to reform has not been introduced this session.
28. The Committee recognises that at this juncture in the session legislation will not now be introduced. Whatever the make-up of the administration is in the next session, it must make legislating for reform of civil legal assistance an immediate priority next session. There is a need for long term structural reform of the current system. In the meantime, the Scottish Government should be taking all steps it can short of primary legislation to ameliorate the situation.

## Key themes

29. In the remainder of this report the Committee explores some key issues emerging from the inquiry and areas in need of reform, in order to significantly improve access to justice. Specifically, the Committee considers the following themes:
- Advice deserts
  - Fee rates
  - Administration
  - Eligibility
  - Public interest litigation and group proceedings
  - Short-term changes
  - Mixed model of delivery
  - User voice
  - Longer-term reform priorities

## Legal aid deserts

30. At the heart of the concerns presented to the Committee was the prevalence of so-called “legal aid deserts”. Before going on to explore the factors precipitating these legal aid deserts and the suggested responses to these factors, it is first useful to set out the extent of the problem and what it means in practice.
31. Pat Thom, President of the Law Society, explained to the Committee what is meant by “legal aid deserts”:
- ”** We refer to “legal aid deserts”, which cover geographical areas and particular areas of law, including those relating to asylum seekers, immigration and employment...the situation is exacerbated by lack of quantity.<sup>2</sup>
32. Several other witnesses highlighted other areas of law and geographic areas that could be described as legal aid deserts. For example, Aaliya Seyal, giving evidence on behalf of the Scottish Association of Law Centres, highlighted housing and welfare law as other areas with a significant shortage of available practitioners.<sup>2</sup>
33. In written evidence provided subsequent to their appearance before the Committee, Citizens Advice Scotland and the Scottish Association of Law Centres that even in Adults With Incapacity Cases, where legal aid is mostly automatically provided, individuals struggle to access a legal aid solicitor.
34. The Human Rights Consortium Scotland was among those highlighting advice deserts in rural and remote areas, such as Orkney, Aberdeen and Aberdeenshire and the Western Isles. It also flagged a lack of access to civil legal assistance for specific areas of the law such as domestic abuse, discrimination and human rights.

35. Dr Marsha Scott, Chief Executive of Scottish Women's Aid, recognised the challenges in rural and remote areas, particularly in the context of domestic abuse. She highlighted that in Grampian Women's Aid are making 50 to 60 calls to find a legal aid solicitor.<sup>4</sup>
36. Dr Marsha Scott, went on to note, however, that while the situation is particularly acute in the Highlands and in island communities the challenges in finding civil legal assistance can be found everywhere in Scotland.<sup>4</sup>
37. Andy Sirel of JustRight Scotland pointed to a similar experience. He noted that in domestic abuse cases across Scotland women are having to contact 30 to 50 solicitors before they can access advice.<sup>4</sup>
38. Dr Sabir Zazai, Chief Executive of the Scottish Refugee Council, also emphasised that this issue is not unique to rural and remote areas:
- ” There are delays with finding a lawyer, as demand outstrips supply. We hear that on our helplines at the Scottish Refugee Council. Some people have even approached me, as the chief executive, to say, “I have been waiting for two months for a lawyer to speak with me about a family reunion application”—and they are in Glasgow. It is not only those outside the central belt who are waiting to speak to a lawyer; there is pressure on demand in the central belt.<sup>4</sup>
39. Some respondents to the call for views commented on the impact of struggling to access legal advice. Citizens Advice Scotland highlighted that it had seen examples of people travelling over 150 miles to access a solicitor.<sup>5</sup>
40. Shared Parenting Scotland noted that its 2024 survey question on legal aid highlighted that 20% of those eligible for legal aid had been forced to represent themselves as party litigants as a consequence of the absence of legal practitioners. In 2022, this was just 2%.<sup>6</sup>
41. The Scottish Association of Law Centres recognised the increased trend in parties representing themselves, stating that this can result in:
- ” ...poorer outcomes, increased pressure on the judicial system, and longer case resolution times.<sup>7</sup>
42. Fiona McPhail of Glasgow University highlighted the implications of these shortages from a housing perspective:
- ” The issue is not just about evictions, mortgage repossessions and homelessness; we are also talking about a good number of people who are stuck in damp housing or people who have a need for legal advice regarding security of tenure, and there are also queries concerning discrimination in the context of housing. The stark reality is that the majority of such cases, which are not deemed to be as urgent as cases with clients who are facing eviction, mortgage repossession or homelessness, are placed on the back burner.<sup>4</sup>
43. Ultimately, the impact of advice deserts is that people cannot exercise their legal

rights. Dr Marsha Scott noted that the extent of this problem is such that it has been highlighted in the UN's "Concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland", which expresses concern about the depletion of legal aid lawyers in Scotland and Northern Ireland.<sup>4</sup>

44. SLAB noted in its additional correspondence to the Committee that although it has no powers over the recruitment or retention of solicitors in private practice, it does have a function of monitoring the availability and accessibility of legal services generally. It further notes that the Law Society of Scotland has a statutory duty to provide SLAB with information to assist it in this monitoring function. With this in mind, SLAB suggests that it is keen to develop a collaborative approach with the Law Society of Scotland to consider supply issues.<sup>1</sup>

45. The extent of this problem is very alarming to the Committee. Across Scotland people's capacity to exercise their legal rights is being severely compromised and as such so too is their capacity to realise their human rights. This is not a new problem and the Scottish Government must take urgent action to address this situation.

46. In seeking to respond to this issue it is critical that there is a better understanding of the extent of unmet need and any response to the issue must begin with an assessment of the level of need. To that end, the Committee encourages SLAB and the Law Society of Scotland to work together to develop a better evidence base for demand and supply of legal aid funded legal services .

## Fees

47. The Committee explored with witnesses what was precipitating these shortages in legal practitioners that are in turn creating legal aid deserts and what could be done to respond to it.
48. Much of the evidence the Committee received suggested that shortages in legal practitioners were attributable to the low rates of fees for solicitors for legal aid work and that increasing those rates would have a significant impact on the availability of legal practitioners.
49. Pat Thom of the Law Society told the Committee that the low fees were such that it was not sustainable for solicitors currently practising in the area of legal aid to continue to do so. Moreover, she told the Committee that the low fees mean that there is a struggle to attract younger lawyers to work in legal aid and that "...we face a retirement cliff edge."<sup>2</sup>
50. Solicitors are paid for legal aid work in one of two ways, block fees or "time and line" fees. Block fees are standard fees for a specific stage of work (eg. until the end of the first court hearing). Block fees are easier to administer but may not take account of the work required in complex cases. "Time and line" fees requiring a detailed account of all work undertaken for a client.

51. Aaliya Seyal provided the Committee with an example of the levels of block fees solicitors are receiving:
- ” With civil legal aid, particularly in relation to housing, block fees do not pay for the work that is involved in certain types of cases. For example, block fees for antisocial behaviour cases are the same as those for rent arrears cases, but the amount of work that is involved is significantly different. A case can involve a statement of claim with more than 100 paragraphs, and you have to respond to questions and meet the client—work that will take a significant number of hours—but your fee for that is just over £100. Similarly, when you are reviewing the production of documents, there can be more than 100 pages, but you get a small fee of £18. You can see why there is a challenge in practitioners not delivering that work, given that the pay is not enough for what solicitors are obliged to do.<sup>2</sup>
52. SLAB emphasised in its written response that there had been a number of increases to fees since the 2000s. These were complex and difficult to track but, since 2019, had amounted to a 25% uplift (not taking into account the impact of inflation).<sup>8</sup>
53. SLAB also expressed its view that the complex issues with current legal aid delivery were unlikely to be addressed by fee increases alone. It stated:
- ” In the context of increasingly difficult decisions being taken by the Scottish Government in relation to public spending, relying on increased fee levels to address wider and often indirectly-related challenges is unlikely to be cost-effective or sustainable long term.<sup>8</sup>
54. At the same time, in its additional evidence SLAB does make clear that reform of fees is required.
55. There was, however, recognition from other stakeholders that shortages in legal practitioners in civil legal assistance were not solely attributable to low fees.
56. Several respondents highlighted issues with recruitment and retention of solicitors as barriers to accessing civil legal assistance. Broadly, legal aid work was seen as requiring large caseloads to be profitable, impacting on work-life balance and the quality of advice and support provided.
57. This was seen as putting off young solicitors from following a career in civil legal assistance work. It was also seen as making it difficult to retain solicitors in jobs with significant civil legal assistance caseloads. Respondents highlighted that jobs with better pay and terms and conditions were available in the public sector side of legal aid, including in SLAB’s Civil Legal Advice Offices and Public Defence Solicitors’ Office (for criminal legal assistance).
58. Pat Thom emphasised this concern in her oral evidence:
- ” I note that baby boomers—I call myself one—were prepared to work six days a week, which perhaps camouflaged the poor financial return, but those who are younger than us are far more pragmatic and have a healthier appreciation of a work-life balance. That is having the effect of younger solicitors not being attracted into the legal aid sector.<sup>2</sup>

59. These disincentives to working in legal aid were also seen as putting an unmanageable strain on the remaining services, increasing work-life balance issues. The Scottish Association of Law Centres stated:
- ” “The pressure on the few solicitors who do offer civil legal assistance is intense. Rising caseloads, inadequate remuneration, and financial insecurity contribute to high levels of stress and burnout disproportionately affecting those working within legal aid practices.”<sup>9</sup>
60. SLAB highlighted concerns around work-life balance in its written response, but noted that these may be due to changes in the legal services market more broadly – or work practices generally (eg. moving between different employers during a career rather than staying with one). It highlighted a range of initiatives it was undertaking (as the biggest employer of legal aid solicitors in Scotland) to improve legal aid career options and build a “talent pipeline”.<sup>8</sup>
61. The Minister for Victims and Community Safety recognised in her evidence to the Committee this need for a “talent pipeline”. She highlighted the Scottish Government Legal Aid traineeships scheme in 2021 and noted that the Scottish Government is currently considering the evaluation of the scheme undertaken by the Law Society of Scotland with a view to considering how it can be rolled out more widely.<sup>10</sup>

62. The Committee welcomes the Scottish Government's recognition of the need to build capacity. The Committee hopes that lessons can be learned from the 2021 scheme and it can be rolled out more widely. The Committee would welcome updates on next steps after the Scottish Government has completed its consideration of the evaluation.

63. Nonetheless, the Committee is not convinced that this kind of capacity building alone is a satisfactory response to the shortages of legal practitioners working in legal aid. It is the view of the Committee that to attract lawyers to work in legal aid and to retain them it is necessary to increase fees. There appears to the Committee to be a clear link between low fee rates and the lack of availability of lawyers willing to undertake legal aid work.

64. To that end, the Committee is very pleased to note the Minister for Victims and Community Safety's commitment to re-initiate fee review planning and collaborate with stakeholders on the reform of legal fees in 2025. It is welcome to see that SLAB is supportive of reform too.

65. This review is long overdue. Moreover, the Committee considers that for this review to be effective it must present proposals for fees that will enable lawyers to work in this field. The Committee would welcome regular updates from the Scottish Government on the progress of this review. The Committee hopes there can be tangible and positive outcomes before the end of the year.

## Administration

66. Bureaucratic processes were identified as another major barrier to offering and accessing civil legal assistance. SLAB administration requirements were seen as burdensome and disproportionate, resulting in a strained relationship between legal aid lawyers and SLAB.
67. A number of respondents to the Committee's call for views highlighted the high administrative burden that comes with a legal aid caseload. This issue overlapped with concerns around low fee rates. Respondents noted that the administration work required to detail time spent on cases and supply this information to SLAB is not directly covered by legal aid fee rates.
68. Specifically, stakeholders expressed concern about the time it took to collect and supply information to SLAB's satisfaction, and the risk of work being abated by SLAB so that solicitors would not be paid for it.
69. Andy Sirel of JustRight Scotland gave the Committee an illustration of the kind of administrative processes solicitors are required to engage in with SLAB:
- ” This afternoon, I will probably go back to my office to negotiate with SLAB over sums of money as small as £7.50 or £15.25. It will say things such as, “You had a meeting that lasted one hour. We think it should only have lasted 45 minutes.” That is the level of granular detail that we are talking about. That is an unwise use not only of my time, but of SLAB's time. We have got to a point at which people like us are spending more than the value of the amount in question arguing about that sum of money.<sup>2</sup>
70. Andy Sirel went on to explain the financial implications of having to comply with this bureaucracy:
- ” Legal aid practices need to employ people simply to do that back end of the process with the Scottish Legal Aid Board. You have to spend £50,000, £60,000 or £70,000 a year just to get some money out of the Scottish Legal Aid Board because of the way the system works. All of that is a complete waste of time because what we want to be doing is working for the individuals who are accessing our services.<sup>2</sup>
71. Witnesses told the Committee that this administrative burden is having a significantly deleterious impact on the relationship between lawyers working in legal aid and SLAB.
72. Pat Thom set out how trust is being eroded:
- ” It is frustrating for a solicitor to have approval for a case and the amount to spend, but when they put their bill in, it is bounced back. Invariably, you go back and forward and spend a lot of time that you are not paid for and, eventually, the Scottish Legal Aid Board decides, “Yes, you deserve that money”. The respect and trust between the Scottish Legal Aid Board and solicitors need to improve.<sup>2</sup>
73. Many others echoed this sentiment. Fiona McPhail told the Committee that SLAB

"does not trust the profession".<sup>4</sup>

74. Colin Lancaster, Chief Executive of SLAB, told the Committee that the administrative processes are an inherent part of a judicare system. He recognised that they are perhaps uncomfortable but suggested they are necessary part of a demand led system. He also noted that where it was in their control to do so, SLAB would seek to simplify processes. He suggested, however, that many processes are set out in legislation and therefore not in SLAB's gift to amend.<sup>10</sup>
75. In addition, the Committee heard that the bureaucratic nature of the system is precluding a trauma-informed approach. Dr Sabir Zazai told the Committee that the way the system is currently configured can be re-traumatising for refugees arriving in Scotland:
- ” People arrive in a strange new world having experienced conflict, a perilous journey and separation from their families, so a trauma informed approach is very important. Asking someone who has had that terrible experience to join a call with a person called a lawyer online or on the phone does not make legal support accessible. That can be retraumatising for some people, because it is the lawyer’s role to ask why the person is submitting a claim for asylum in the UK. People might have to describe some terrible experiences on a call on a phone or computer. It is all important that people can speak to a human being who can listen to them and take note of their case and some of their evidence.<sup>4</sup>
76. Andy Sirel told the Committee that the block fees approach is not conducive to a trauma informed approach as legal aid lawyers are not compensated for adopting such an approach even if doing so might be necessary.<sup>2</sup>
77. In her evidence to the Committee the Minister for Victims and Community Safety recognised the importance of a trauma informed approach and indicated her willingness to work with SLAB and third sector organisations to reform the system to allow for trauma informed approaches.<sup>10</sup>
78. Both the Law Society of Scotland and the Scottish Association of Law Centres made specific suggestions to address these bureaucratic challenges. They included:
- quicker payments for solicitors and third parties, including the suggestion that SLAB deals directly with third parties like expert witnesses and child welfare reporters rather than making evidence requests through solicitors;
  - improving the process for requesting uplifts, in particular reflecting realistic case expenditure;
  - improving the abatement process so that work required to progress a case in a professional and trauma-informed manner was not discounted by SLAB;
  - removing the “double audit” created by assessing the same expenditure via the uplift and abatement processes; and
  - clarifying rules on “special urgency” (where work is carried out before SLAB has granted legal aid).

79. The Committee welcomes these suggestions and invites the Scottish Government and SLAB to give careful consideration to them.

80. The Committee also welcomes the Minister's willingness to examine how processes might be reformed to allow for trauma informed processes.

81. The Committee has significant concerns about the current administrative processes and the damaging effect they are having both on relationships between legal practitioners and SLAB and on the capacity to undertake trauma informed approaches.

82. The Committee calls on the Scottish Government and SLAB to take action to address these concerns. The Committee recognises that the current processes exist within a legal framework and that in some cases changes cannot be made immediately. Nonetheless, the Committee considers that removing administrative burdens could not only address some of the challenges in the system, but could result in financial savings for SLAB and the legal profession while also improving the experience of those engaging with the civil legal assistance system.

## Eligibility

83. The Committee received evidence raising concerns about the financial thresholds for Advice and Assistance. It was noted that many people who could not realistically afford to pay privately for a solicitor were excluded from eligibility for Advice and Assistance.

84. To be eligible for Advice and Assistance an applicant has to meet the thresholds for both disposable income and disposable capital. The disposable income threshold is £245 per week and the disposable capital one is £1,716. These thresholds have remained the same since 2011.

85. Dr Ben Christman of the Environmental Rights Centre for Scotland put those figures in context:

” ...if someone has a disposable income of more than £245 per week, they will be ineligible. However, that is equivalent to the earnings of someone aged over 21 who works 20 hours per week in a minimum wage job...The capital threshold is about one tenth of the equivalent threshold that applies to universal credit, which is £16,000. I do not think that it is too controversial to say that universal credit is not seen as the most generous social security payment in the world. Therefore, the rules can leave someone in an absurd situation whereby they are in receipt of universal credit but ineligible for advice and assistance, because they have savings or other capital of more than the threshold of around £1,700. They can be eligible for universal credit but ineligible for advice and assistance. Consequently, someone who is receiving universal credit is effectively expected to pay privately for legal advice. <sup>4</sup>

86. Evidence received by the Committee from bodies including Citizens Advice Scotland stressed that this results in a significant proportion of the population not having access to justice as a result of the low thresholds for eligibility for legal aid. Andy Sirel told the Committee that the cost of a legal case can be anything between £25,000 and £500,000. Yet, if you have £1,718 in your bank account, you are not eligible for Advice and Assistance. <sup>2</sup>

87. The Committee also heard from Aaliya Seyal about specific and additional challenges arising for women in black and minority ethnic communities:

” Going back to the eligibility criteria, when you are considering capital and savings, you are also taking into consideration jewellery. In minority ethnic communities, women’s jewellery is often passed down from generation to generation. The position of someone having to think, “I cannot get legal advice to protect myself and/or my children because I have declared that I have jewellery that is of a certain value” and having to consider selling it in order to get that legal advice needs to be understood. <sup>2</sup>

88. The Scottish Association of Law Centres has produced a briefing calling for Advice and Assistance thresholds to be increased to the levels of Civil Legal Aid. SLAB estimates this would cost £4 million. Other suggestions made to the Committee include uprating current limits in line with inflation and creating a statutory requirement for the thresholds to be updated regularly.

89. In oral evidence to the Committee Colin Lancaster noted that the ways in which Advice and Assistance is used has changed since it was first introduced in the 1970s and that it is now often used as a precursor to litigation. On that basis, he recognised that the low capital limit might pose a barrier to access to justice. He further noted that SLAB is undertaking work looking at financial eligibility. <sup>10</sup>

90. The Committee welcomes both this recognition from SLAB and its work reviewing financial eligibility for Advice and Assistance. Nonetheless, the Committee is concerned by the barriers to justice that are being created by the current thresholds for Advice and Assistance. It does not seem tenable to the Committee that someone with £1,718 in their account should not be able to access Advice and Assistance. The Committee recommends that Advice and Assistance

financial eligibility is increased to match civil legal assistance thresholds as proposed by the Scottish Association of Law Centres. Moreover, the Committee considers that all levels in Advice and Assistance and Civil Legal Assistance should be increased in line with inflation since 2011.

91. There were also calls for financial eligibility requirements to be waived for certain types of case. These included for civil protection orders, gender-based violence more generally and cases against councils relating to their homelessness obligations.
92. Fiona McPhail highlighted that there are already certain types of cases where eligibility requirements are waived. Specifically, she highlighted that in the current system adults with incapacity are not subject to means testing. Fiona McPhail went on to suggest that that eligibility requirements should also be waived in a housing emergency for judicial review actions where local authorities are in breach of their statutory homelessness obligations.<sup>4</sup>
93. Amongst others, Scottish Women's Aid argued that means testing should be waived for women, children and young people experiencing domestic abuse:
  - ” Legal services should be provided free for all women, children and young people experiencing domestic abuse, with no means test and no qualification on accessing this for women.<sup>11</sup>
94. Dr Marsha Scott in her oral evidence expanded on this saying that the eligibility requirements for people experiencing domestic abuse were inconsistent with any other response to domestic abuse:
  - ” How is it demand led, and how are you following Scottish policy in every other area connected to domestic abuse if you are means testing people who are subject to financial and economic abuse?<sup>4</sup>
95. Hyo Eun Shin of Citizens Advice Scotland offered the Committee a practical example of where a survivor of domestic abuse has been unable to obtain legal aid because of the financial threshold:

” Sara is a survivor of domestic abuse and has had to flee for her own safety and that of her 12-year-old son. She is legally married. Her husband has the financial means and resources to employ solicitors who have been advising him. Sara left with nothing ... All the marital property was left behind. There are two properties from the marriage with an estimated value of £260,000. However, Sara has no access to these without legal assistance. No solicitor will take her on without payment. Because of the assets she cannot apply for benefits which would entitle her to apply for legal aid. Even though the assets are attributed to her, there is no way she can access them without the assistance of a solicitor to do so. As it stands, the client is in the dilemma of having assets which are regarded as capital which bars her from legal assistance, but which she cannot access without legal assistance. This means, the abuser has recourse to use the law which has enabled him to retain all the assets from the marriage, while Sara is left with no assistance whatsoever to help in her situation, thereby enabling a degree of coercive control to continue.<sup>2</sup>

96. Aaliya Seyal echoed sentiments about homelessness and domestic abuse and also proposed that eligibility requirements should be waived in relation to inequality and disability:

” The other issue that needs to be looked at is around inequalities and disability. Earlier, I gave the example of where somebody might not be entitled because of savings that they have put aside for a particular purpose, which precludes them from exercising their rights. That means that we cannot make progress on inequalities and disabilities, because there is not that case law. If there is no challenge, poor practices will continue.<sup>2</sup>

97. Colin Lancaster, Chief Executive of SLAB told the Committee that it is currently consulting on means testing. Moreover, he told the Committee that there is already more flexibility in the system than some would suggest. He set out the kind of flexibilities in place for a woman seeking to leave an abusive relationship:

” In the scenario that you have talked about, in which a woman seeking to leave an abusive relationship is either not aware of, or cannot access or obtain, evidence of the family finances, we can make allowances for all that. For example, if there is trapped capital, we can disregard it; if an abusive partner has run up debts without the survivor’s knowledge, we can take that into account in any means assessment. We can proceed to grant without seeing the normal evidence if that evidence is, in effect, in the home and trying to retrieve it would put somebody at risk.<sup>10</sup>

98. At the same time Colin Lancaster recognised that the complexity in the system might make it hard for solicitors who do not regularly engage with this system to be familiar with those flexibilities.<sup>10</sup>

99. In SLAB’s subsequent correspondence to the Committee, with respect to legal cases involving domestic abuse, it highlighted that it does not take into account the value of the applicant’s main dwelling nor any assets (such as a house in divorce proceedings) which are the subject of the legal claim in question. It also highlighted that it has the discretion to grant legal aid without evidence where the applicant has

no access to financial information. In the correspondence SLAB also notes that if an applicant is prevented from accessing income or capital by their partner then SLAB can disregard that income from its assessment of eligibility. Likewise, SLAB notes that it can use its discretion to disregard debts in the name of the applicant if the debts were incurred without the applicants awareness.<sup>1</sup>

100. The Committee appreciates that there might be flexibilities in the system to allow for legal aid to be provided to a woman escaping domestic abuse. Awareness of these flexibilities needs to be improved. However, the Committee is not persuaded that relying on the availability of these flexibilities alone is sufficient.

101. The Committee strongly recommends that the Scottish Government pursue reforms with a view to removing financial eligibility tests for civil protection orders and homelessness due to a breach of statutory duty cases. The Committee also urges the Scottish Government to investigate options for ensuring legal aid is available without means-testing to a wider selection of domestic abuse cases.

## **Public interest litigation and group proceedings**

102. Civil legal assistance is only available to individuals (although that can include individuals acting in a representative capacity). This means that groups – including campaign groups or people involved in group litigation (where a number of people with similar legal problems work together on court action) – are unable to access legal aid collectively. It also prevents third sector organisations getting legal aid funding to raise public interest litigation (where one case is taken forward to challenge a particular perceived wider problem).

103. Concerns were raised about the inability to obtain civil legal assistance for group proceedings both in the course of this inquiry and in the course of this Committee's previous work on the Aarhus Convention.

104. It was noted that structural injustice (such as discrimination or human rights breaches) is often experienced by large groups of people. Current rules prevent these types of breaches being taken forward via collective action. Professor Boyle described this as the “individualisation of collective injustice”.<sup>4</sup>

105. The key barrier was seen as Regulation 15 of the Civil Legal Aid (Scotland) Regulations 2000. This applies where several people have a “joint interest” in legal action. In these circumstances, SLAB cannot grant Civil Legal Aid where the applicant is not “seriously prejudiced” (ie. their rights are significantly impacted) by the situation or another person with the same interest could be expected to take the matter forward.

106. Both Dr Ben Christman and Professor Boyle in oral evidence told the Committee about the chilling effect Regulation 15 is having on collective action and the lack of clarity about its operation. Both argued that there would be significant benefits that would come from collective rather than individual action. They noted that such

approaches result in problems being fixed for all and greater efficiencies in the system.<sup>4</sup>

107. Dr Christman suggested to the Committee that cases that fall within the scope of the Aarhus Convention should be excluded from the limitations of Regulation 15.<sup>4</sup>
108. Professor Boyle argued specifically that group actions offer the opportunity to respond to systemic issues relating to poverty. She suggested that Regulation 15 is acting as a barrier to collective action. She made specific suggestions for how Regulation 15 could be revised:
- ” There is room to clarify the wording of regulation 15 to strike a better balance of cases that are needed in relation to group proceedings or public interest litigation, which tend to be about the issue itself, not the person. Legal aid should not always be tied to an individual. First, that is to prevent that individual taking on the burden for everybody else, which is a completely unfair expectation to place on someone. Also, it will not always be clear that only one person is impacted, because it is a collective issue. We need clarity on that. Secondly, SLAB could improve its guidance on the reasonableness test to say that, if the case is going to address a wider public interest point and it will affect many people if it funds the case, the practical benefits of that and the benefits for society make funding it worth while. Changes to the rules in Northern Ireland have done that—they have expanded the reasonableness test—and that does not require any legislation. However, I understand why SLAB would be concerned about taking that step until regulation 15 has been clarified.<sup>4</sup>
109. In oral evidence Marie-Louise Fox from SLAB suggested to the Committee that Regulation 15 was not always rigidly applied and gave examples of where civil legal assistance had been granted:
- ” Regulation 15 has come into our decision making, but, on several occasions, we have granted legal aid. I can give the committee some examples from the past couple of years. We granted legal aid in relation to the action taken to challenge the decision to demolish the Wyndford Road flats in Glasgow; we granted legal aid in relation to the redevelopment by the local authority of a recreational park in Torry in Aberdeen as part of the sustainable energy strategy; in Moray, we granted legal aid to challenge a housing development decision in Slochy woods; we have granted legal aid in relation to the very high-profile case that challenged the winter fuel allowance decision by Scottish ministers; and we have also granted legal aid in relation to the closure of the public library in Balloch, the closure of Kirkton community centre and library and the closure of the swimming pool in Auchinleck.<sup>10</sup>
110. The Committee raised these concerns with the Minister for Victims and Community Safety. The Minister noted that the Scottish Government was reflecting on this at least insofar as environmental rights are concerned:

” SLAB has been engaging directly on that with the Environmental Rights Centre for Scotland since earlier this year and has provided an initial briefing on its approach. Its intention is to use engagement to establish evidence of the position from their respective perspectives in order to better understand the potential problem. That work is ongoing with the aim of delivering advice to the Scottish Government on recommended options. We will address that when we get the advice. <sup>10</sup>

111. The Committee welcomes that the Minister and SLAB are re-visiting Regulation 15 insofar as environmental cases are concerned. However, the Committee is of the strong view that there would be significant benefits and efficiencies from re-visiting Regulation 15 more broadly. While SLAB pointed to cases where civil legal assistance has been granted they remain isolated cases. The Committee asks SLAB and the Scottish Government to look at Regulation 15 again with a view to allowing more collective action, reducing the burden on the individual and broadening the coterie of people benefiting from proceedings in a more efficient way. The Committee in particular asks the SLAB and the Scottish Government to consider Professor Boyle's suggestions as regards the reasonableness test.

## Short-term changes

112. In this section of the report the Committee considers some of the evidence it received on the Scottish Government's proposals for short-term reforms.

113. As noted earlier, as part of its short-term reforms the Scottish Government has committed to introducing block fees for Adults with Incapacity.

114. Block fees involve a set sum paid for reaching a certain stage in a case (eg. the first court hearing). They remove the need for solicitors to account for every piece of work they do (eg. time for phone calls, number of pages of a letter). They therefore save on administration time, both for solicitors and for SLAB.

115. However, block fees do not always take account of all the work necessary to deal with a case. SLAB has previously described this as “swings and roundabouts” – with some cases being under-paid and some cases being over-paid.

116. Andy Sirel highlighted the benefits of block fees:

” If we were able to get a template, or a block fee, that would free us up to spend a lot more time on the client, as opposed to spending time with the Scottish Legal Aid Board. It absolutely has to be the case that we move in that direction. <sup>2</sup>

117. However, there are concerns that block fees disincentivise solicitors from taking on urgent or complex cases because of the additional work involved. They may also undermine their ability to undertake the extra steps to take a diligent or trauma informed approach to their work.

118. Block fees can also remove some flexibility from the system. Where court or legislative processes change, a block fee may no longer represent sustainable payment for a particular type of work. There are general criticisms that many current block fees are predicated on getting a case to court, rather than recognising the work required to negotiate a settlement in advance of court action.

119. Aaliya Seyal set out her concerns about block fees:

” The overall principle that I am outlining is that, where block fees are meant to simplify things but do not necessarily take into consideration the level of work that is involved at each stage of the process, whether that is the court process or the process around engaging with a client, that could have an unintended consequence of deterring people from doing that work, if those issues are not appropriately considered.<sup>2</sup>

120. Pat Thom echoed these sentiments and suggested that there needed to be flexibility, so that if the complexity of the case is such that it is not suitable for a block fee then a more suitable mechanism can be applied.<sup>2</sup>

121. On the basis of the evidence the Committee has received there are clearly benefits attached to using block fees. At the same the Committee considers that block fees will not be appropriate in all cases, in particular more complex cases.

122. In the absence of greater detail around the proposals for block fees in relation to Adults with Incapacity cases it is difficult for the Committee to say definitively whether this is the right approach to adopt. The Committee would welcome more detail from the Scottish Government on these proposals.

123. The Scottish Government's legal aid discussion paper also includes proposals for assessing financial eligibility using standardised personal allowances.

124. The current financial assessment process for Civil Legal Aid is very flexible. Various types of reasonable expenditure -such as childcare costs, accommodation costs and certain loans - can be deducted from disposable income and non-disposable capital assets can be excluded from calculations.

125. However, the process is administratively burdensome. The time spent providing evidence to support an assessment is seen as a drain on the time and resources of clients, solicitors and SLAB. Some respondents reported having to offer specific support appointments to clients to help them fill in the forms (which cannot be charged to the legal aid budget).

126. Creating standardised personal allowances would remove much of this administrative burden. However, it may also remove some of the flexibility from the system. This could mean that fewer people can qualify for Civil Legal Aid.

127. Those respondents to the call for views who commented were supportive of the Scottish Government's proposals. However, it is unclear how they will operate in practice.

128. Citizens Advice Scotland supported standardised personal allowances, but called for them to realistically reflect necessary expenditure, including for specific groups who might have higher expenditure, such as disabled people.

129. Marie-Louise Fox of SLAB explained to the Committee about the system it is developing:

” We are selecting a system that is used by different Government departments and local authorities when means testing is required to put in place standardised allowances not only for individuals, their partners and any dependent children but, importantly, in situations when there are other factors such as disability. We are coming to the end of that work and are now developing the policy. We will go out to public consultation again to say, “This is what we have ended up with after the initial consultation and what we think could make the system more transparent, simple and easier to understand for people”.<sup>10</sup>

130. The Committee notes the potential benefits of standardised personal allowances, however, the Committee also notes the concerns highlighted in evidence about the potential to reduce the number of people qualifying for Civil Legal Aid.

131. The Committee would welcome more detail on the proposals for standardised personal allowances. The Committee would also welcome how any such approach will seek to mitigate against reducing the number of people qualifying for Civil Legal Aid.

132. Although not specifically addressed as a potential short term change in the Scottish Government's legal aid discussion paper, the Committee also heard concerns about clawback. This is the process by which SLAB can recover some of the costs of providing legal aid-funded legal advice from assets (such as a house or compensation) gained or retained as a result of legal action.

133. The Law Society of Scotland highlighted concerns about clawback in its written evidence to the Committee. It suggested that clawback had particular implications for lower value compensation cases (such as employment rights cases) which may mean they were not worth pursuing.<sup>12</sup>

134. Aaliya Seyal suggested to the Committee that the consequence of this was not just poor employment practices for the individual choosing not to pursue a case, but ongoing poor employment practices for current and future employees.<sup>2</sup>

135. Pat Thom explained to the Committee how clawback can be particularly damaging to victims of economic and social abuse:

- ” If the person qualifies for and gets legal aid and that assists the victim of the abuse to retain the house, there is this thing called “clawback”, which involves the Scottish Legal Aid Board deciding that, because the person has been successful in their action and has retained property as a consequence, they will have to use that property to pay back the legal aid fees that the solicitor has been paid. There is provision for getting exceptions to that, based on hardship, but it is a complicated process and would scare people and put them off.<sup>2</sup>
136. The Committee also noted the concerns presented to it by Citizens Advice Scotland about contributions. Citizens Advice Scotland highlighted that people may qualify financially for civil legal assistance but be required to make a contribution towards their legal costs from their own income.
137. This concern was echoed by Grampian Regional Equality Council which noted that this requirement can place additional strain on people who are in financially vulnerable situations, deterring them from exercising their rights.

138. It is concerning to the Committee that people who would otherwise qualify for legal aid are being deterred from exercising their rights as a consequence of the potential for clawback or a requirement to make an unrealistic contribution to their legal costs.

139. The Committee urges the Scottish Government and SLAB to give careful reflection to both clawback and contributions to costs as they appear to the Committee to be currently acting as barriers to justices. The Committee would encourage the Scottish Government and SLAB to reflect on this and seek to make changes as part of its short-term reforms.

## Mixed model of delivery

140. In its discussion paper on legal aid, the Scottish Government identified two proposals for longer term reform of the legal aid system. These were developing a mixed model of provision (involving options like grant funding as well as case by case funding for solicitors in private practice) and embedding the user voice in the process, which is explored in the next section of this report.
141. Civil legal assistance is currently mainly provided via judicare (case by case funding for solicitors in private practice). There is a small amount of grant-funding as well as some provision by solicitors directly employed by SLAB. These solicitors are based in Civil Legal Assistance Offices, serving Edinburgh and the Lothians; Aberdeen and Aberdeenshire; Argyll and Bute and Highlands and Islands.
142. For criminal and children’s legal assistance, SLAB has the option of contracting with solicitors for the provision of specific services. However, it has yet to be used. Introducing contracting for civil legal assistance would require changes to primary legislation.

143. There are no mechanisms in the judicare system to assess demand or to match supply with demand. In its response to the call for views, SLAB said:
- ” Without systemic assessment of need, the Scottish Government cannot identify what needs are changing, the extent to which they are being met and whether there is a gap that should be met by publicly funded legal assistance.
144. Moving to a more mixed model of provision could address some of these challenges. Grant funding, direct employment or contracting could be used to specifically commission services to match need.
145. There was support for grant-funding from respondents to the call for views. It was seen as enabling more holistic service provision which generated value for money by removing some of the administrative burdens present in the judicare system.
146. Witnesses in oral evidence were also largely supportive of grant funding as a mechanism to plug gaps. Sally Mair pointed out that it allows legal support to be provided in areas which are legal aid deserts.
147. Aaliya Seyal told the Committee that she considers grant funding beneficial because it:
- ...gives the ability to provide holistic services and to collaborate with other partners so that you are focusing not only on the legal issue but on other support issues that the individual might have, to maximise the chance of minimising recurring instances of disadvantage. <sup>2</sup>
148. Andy Sirel also pointed to the benefits of grant funding and explained how it had enabled JustRight Scotland to be more effective in the support it provides to women fleeing domestic abuse:
- ” We are a recipient of grant funding via Rape Crisis Scotland for the Scottish Women’s Rights Centre alongside the University of Strathclyde Law Clinic. I do not know whether I would say that it plugs the gaps, but it allows us to collaborate with different organisations. You are pooling your resources to a certain extent. Rape Crisis, for example, is getting a lot of information from our legal service; we are getting some great information from its survivor groups or from training that we collectively provide; and the advocacy service there is able to work hand in glove with the legal service. That is critical for women who are fleeing domestic abuse, and grant funding allows some of that to happen, which is really important. <sup>2</sup>
149. Pat Thom, however, expressed strong reservations about a grant-funding approach:

” I am personally not a fan of grant funding. The difficulty with grant funding is that it is a fixed amount, which appeals to the accountants of both the Scottish Government and the Scottish Legal Aid Board. The judicare system that we now have is demand led. As long as the demand is there, the money has to be paid. My concerns with grant funding, quite apart from some other issues, is that it seems to be awarded each year, so those who get the grants have concerns about whether they will get the money. My real concern is that it is a fixed amount and that it is not sufficient to cover the need. It is ring fenced, and once the money is spent, there is no mechanism to get any more money. I personally prefer the current judicare system.<sup>2</sup>

150. Unlike Pat Thom, Hyo Eun Shin and Sally Mair were both supportive of grant funding, but expressed concerns about the lack of certainty in the system created by the need to apply for funding on an annual basis. Hyo told the Committee:

” It is difficult even to maintain a level of service, and the money could be much better spent or could go much further if it were not for the annual funding cycle that makes everything so precarious for the staff, for the projects and, of course, for the rights holders who come to us for support.<sup>2</sup>

151. Dr Scott also raised concerns about the annual funding cycle and explained how this process combined with the slow pace of bureaucracy in SLAB had resulted in Women in Edinburgh being left without funding for a year.<sup>4</sup>

152. Fiona McPhail echoed these concerns about the annual application process and suggested that funding should be provided on the basis of a three to five year commitment to offer greater certainty. Moreover, Fiona McPhail, as well as others, argued for greater expenditure on grant funding.<sup>4</sup>

153. In her evidence to the Committee the Minister for Victims and Community Safety recognised the challenges in an annual grant funding process and confirmed that the Scottish Government’s aim is to be able to give year-to-year funding. She also stressed that a move to a mixed model was not being pursued with a view to saving money.<sup>10</sup>

154. The Committee welcomes this ambition to give greater certainty of funding. The Committee also welcomes the Minister's assertion that this model isn't being pursued with a view to saving money.

155. While recognising the limitations of grant funding, the Committee believes that providing more money for grant funding in the short-term could address the advice needs of women in domestic abuse situations, asylum seekers and homeless people.

156. The Committee also urges the Minister to follow through on her commitment to provide multi-year settlements and to work with SLAB to deliver on this ambition.

157. The Committee did not explore other models for delivery such as contracting or directly employed solicitors in any detail, but invites the Scottish Government to work with SLAB to ensure all options are taken into account in exploring how best to provide access to justice for all.

## User voice

158. A key feature of the Scottish Government's discussion paper on legal aid was around the need for a user voice in planning and delivery.
159. Respondents to the Committee's call for views were supportive of recommendations around embedding the user voice in service planning and delivery. This was seen as helping to tailor services, address unmet need and improve services for vulnerable groups. Consumer Scotland saw this as an immediate priority rather than something that should wait for longer-term reform.
160. However, it was noted that capturing user experiences may be difficult to achieve. Professor Wilding said:
- ” I am in favour of embedding user voice but would add that it is very important to find ways of including the more marginalised user, via representative or intermediary groups, otherwise there is a real risk of embedding only the most capable users' voices, and so entrenching the disadvantage to people who are less confident, less able to self-help or more digitally excluded, who typically face the most complex and clustered legal problems. <sup>13</sup>
161. In its evidence sessions the Committee again heard support for engaging with users, in recognition that the current system is not a user friendly one. Hyo Eun Shin stressed that any engagement must be meaningful and reach marginalised and hard to reach groups for it to be effective. <sup>2</sup>

162. The Committee echoes the views of Hyon Eun Shin. While the Committee welcomes an emphasis on engaging with users more effectively to ensure the system is tailored to their needs, any engagement must be meaningful and not tokenistic. Moreover, it must reach the most marginalised groups in society who encounter the greatest challenges in accessing justice.
163. The Committee would welcome more details on the Scottish Government's plans for obtaining the user voice. The Committee would also appreciate being kept informed of developments.

## Other long term reform priorities

164. The evidence the Committee received on long term reform priorities was not limited to issues set out in the Scottish Government's discussion paper on legal aid reform.

165. Amongst other things, Citizens Advice Scotland expressed support for a shift to early intervention and preventative work which could improve outcomes and reduce costs by reducing the pressure on the courts system. It was suggested that providing more grant funding could allow for a greater emphasis on early intervention projects.
166. Hyo Eun Shin told the Committee:
- ” As I have said, early intervention and prevention are key, with a focus on less stressful, less costly and earlier resolution of legal issues where possible. Effort could also be made to improve the ways in which the whole advice sector works together, with better triaging, enhanced resourcing and the promotion of alternative dispute resolution where it is suitable and appropriate.<sup>2</sup>
167. It was suggested that early intervention and preventative work could also involve integration of wider options for dispute resolution, such as ombudsmen, complaint handlers and regulators.
168. There were also calls to support alternative dispute resolution, such as mediation and conflict resolution. The Human Rights Consortium Scotland noted that this could deliver better outcomes for clients.
169. Shared Parenting Scotland supported this approach and noted that the current adversarial system for resolving disputed between parents encourages them to see the worst in each other. It called for an approach more geared towards problem-solving approach and highlighted examples of international good practice.
170. Scottish Women’s Aid, however, highlighted that in domestic abuse situations mediation can be used by the perpetrator to continue their abusive behaviour. Accordingly it does not support mediation in situations where there is abuse.<sup>4</sup>
171. Professor Boyle also emphasised a preventative approach, responding to how legal problems are clustered:
- ” ...if you address issues and are as preventative as possible as early as possible, you can stop things from spiralling, because a lot of the issues are connected. The research suggests co-locating services, for example, and some excellent work has been done on that by Hazel Genn, Pascoe Pleasance and others. For decades, they have been looking at the idea of co-locating services where people use them. Even the number of different poverty banks that we have is connected to violations of human rights and social rights that, ultimately, should be addressed as unmet legal needs.<sup>4</sup>
172. Dr Scott also advocated a preventative approach and highlighted the importance of public legal education. She pointed to the work Scottish Women’s Aid had done with the Legal Education Foundation. She suggested that this kind of early intervention has the potential to reduce court burden, trauma and the need for legal aid services.<sup>4</sup>
173. The Law Society of Scotland also emphasised the importance of an increases role for public legal education, so the public know what is available to them and how to access it.

174. While not all of these preventative approaches would work in all circumstances, it is nonetheless clear that there is broad support for different preventative tools to suit the circumstances. Moreover, there would appear to be a lot of benefits to furthering public legal education.

175. The Committee urges the Scottish Government to give careful consideration to preventative measures as part of its reform proposals.

## Conclusion

176. As the Committee noted at the beginning of this report there is an urgent need for action to improve the delivery of the civil legal assistance and in turn improve access to justice.

177. It is highly unsatisfactory that legislation has not been introduced this session to reform the civil legal assistance system. There has been an awareness of the need for reform since before this session began and we should not find ourselves in the position of legislation still having not been introduced as we end the session.

178. The Committee recognises, however, that it is too late in the session to introduce primary legislation now to reform civil legal assistance. While the Committee recognises that some changes can only be made by way of primary legislation, the Committee strongly urges the Scottish Government to make whatever changes they can in the interim to effect an improvement in access to justice.

179. Legal aid deserts cannot be allowed to persist in Scotland.

180. The Scottish Government must work with SLAB now to progress reforms not requiring primary legislation. Specifically, in the short-term, the Scottish Government must:

- Proceed with reforms to increase fees paid to legal practitioners;
- Find more opportunities for traineeships to increase capacity;
- Consider proposals to reduce administrative burdens and bureaucracy, thereby improving relations between SLAB and legal practitioners and creating an environment in which trauma informed approaches can thrive;

- Broaden those eligible for civil legal assistance by increasing Advice and Assistance thresholds to match Civil Legal Assistance thresholds;
- Moreover, all levels in advice and assistance and civil legal assistance should be increase in line with inflation since 2011;
- Pursue reforms removing financial eligibility tests for civil protection orders and homelessness due to a breach of statutory duty cases;
- Investigate options for ensuring legal aid is available without means-testing to a wider selection of domestic abuse cases;
- Re-visit Regulation 15 with a view to enabling greater access to collective action;
- Re-visit clawback provisions and contribution costs that might be discouraging people from pursuing proceedings.

181. In the longer term the Committee welcomes the emphasis being placed on mixed models of delivery and user voice by the Scottish Government. The Committee also asks that the Scottish Government consider preventative approaches and public legal education as part of its discussion on longer-term reforms.

182. The Committee looks forward to receiving the Scottish Government's response and hopes that this report can contribute to an increased urgency in meeting the challenges evident in the civil legal aid system. The Committee will be closely monitoring progress during the remainder of this session and will be encouraging its successor Committee to continue to apply close scrutiny of the Scottish Government's response to the challenges in the civil legal aid system next session.

# Annex

## 183. Technical terms

This report uses the following terminology:

- **Abatement** – when SLAB decides work was not reasonably required to progress a case and therefore does not pay for it.
- **Block fees** – standard fees for a specific stage of work (eg. until the end of the first court hearing). Block fees are easier to administer but may not take account of the work required in complex cases. The alternative to block fees is “time and line” fees – requiring a detailed account of all work undertaken for a client.
- **Civil Legal Assistance Offices** – services provided by solicitors employed by SLAB which target particular geographical areas and particular types of case.
- **Civil protection orders** – orders for the protection of victims of domestic abuse (such as preventing the abuser entering the family home) which must be sought through the civil courts.
- **Clawback** – the process by which SLAB can recover some of the costs of providing legal aid-funded legal advice from assets (such as a house or compensation) gained or retained as a result of legal action.
- **Evans Review** – an independent, strategic review of legal aid commissioned by the Scottish Government, which reported in 2018.
- **Judicare** – the term for case-by-case legal aid funding provided to solicitors in private practice.
- **Means tests** – tests looking at the financial position of a legal aid applicant.
- **Merits tests** – tests looking at the strength or circumstances of the case.
- **Outlays** – expenses paid by solicitors to third parties – such as fees to expert witnesses, advocates or child welfare reporters. Solicitors are responsible for paying these expenses but can claim the money back from the legal aid fund.
- **Pro bono** – work carried out by lawyers for free.
- **Publicly funded legal assistance** – the term used in the Evans Review to describe all publicly funded advice services, including services such as those provided by local authorities and CABx as well as solicitors.
- **Scope** – the term used to describe the issues covered by a legal aid scheme. Scotland’s legal aid scheme has a wide scope – covering most forms of court action.
- **Uplifts** – the process getting SLAB to sanction expenditure above set limits for different types of advice.

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